MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Proposals for Regulations under the Building (Earthquake-prone Buildings) Amendment Act 2016

FORM FOR SUBMISSION

New Zealand Government

FORM FOR SUBMISSION

This form sets out the consultation questions corresponding to each proposal in *Proposals for Regulations under the Building (Earthquake-prone Buildings) Amendment Act 2016* (the Regulations discussion document), in a format for your response.

Instructions for use

Please refer to section 1 of the Regulations discussion document for details of how to make your submission.

These questions are indicative only and are not intended to limit your response.

You do not have to use this form to make your submission.

If you do choose to use this form to make your submission and complete this form electronically, the response boxes will expand accordingly as you type your response.

You may also print this form and handwrite your response. If you intend to do this, you may expand the response boxes before printing if required, or continue your submission on an attached piece of paper if you run out of space. If you need to do this, please label your response and the question to which it corresponds clearly.

You can:

- email your completed submission to EPBconsultation@mbie.govt.nz, or
- post your completed submission to:

  Ministry of Business, Innovation and Employment
  15 Stout Street
  PO Box 1473
  Wellington 6140
  Attention: Earthquake-prone buildings consultation

Please provide your contact details below with your submission.

Name	**Contact details (email or physical address)**
Sue Glyde **On Behalf of:** **Body Corporate Chairs' Group**	glyde@xtra.co.nz

Objectives for all regulations

Objectives for regulations

- Promote clarity and transparency
- Be workable and efficient
- Be effective
- Promote consistency with other applicable requirements
- Promote equity and fairness

1. Do you agree with the objectives for making regulations?
Yes

2. Are there any other objectives that should be considered?
None identified

Ultimate capacity

Proposal at a glance	What this does	Why
Definition of 'ultimate capacity' (section 5.1)	Clarifies the level of building performance required to help determine whether or not a building is earthquake prone	Promotes more consistent identification of earthquake-prone buildings by territorial authorities **Note**: this term is used in the definition of an earthquake-prone building in the Building Act, but is currently not defined

3. Do you agree that defining 'ultimate capacity' will help to achieve the objectives for all regulations? What are the reasons for your views?
Given the use of the term in the Act, it is important in the interests of clarity and consistency that this be defined.

4. Do you agree with the suggested definition? Please give reasons for your views.
The BCCG does not feel it is qualified to comment on the suggested definition.

5. Are there any other technical criteria that should be included in the definition of 'ultimate capacity'? If so, what are these and why do you think they are relevant?

6. If you did not agree with the suggested definition, what definition do you think should be used? Please give reasons for your views.

7. Do you have any other comments on the proposals about the definition of ultimate capacity?

Categories of earthquake ratings

Proposal at a glance	What this does	Why
Earthquake ratings categories (section 5.2)	Prescribes two categories of earthquake ratings for earthquake-prone buildings and expresses these in terms of %NBS	Provides information about the risk of specific buildings, allows prospective building users to make decisions about building use

8. Do you agree that establishing categories of earthquake ratings will help to achieve the objectives for all regulations? What are the reasons for your views?

The BCCG believes that the only rating categories required are earthquake prone or not earthquake prone i.e. above and below 34% of NBS, without further categorisation. This is simple for the public to understand and for the TAs to administer.

If the categories are to be defined using the % of NBS, the inaccuracies in determining the % of NBS and the use of rounding (as indicated in the Engineering Assessment Guidelines) will make allocation of the correct category a subject for debate.

9. Do you agree that regulations are required to prescribe categories of earthquake ratings or do you think some other mechanism should be considered? What are the reasons for your views?

If there must be categories, then yes the regulations are the correct place to define these to ensure transparency.

10. Do you agree with the proposal to create two bands of earthquake ratings for buildings? What are the reasons for your views?

The BCCG does not agree that there is a need for two categories of ratings for EPBs, for the following reasons:

- *There may be a greater stigma placed on buildings under 20%: the proposal has the potential to significantly impact on businesses/rentals which could impact income and therefore affect the ability to raise funds for strengthening.*
- *There is already adequate incentive to strengthen an EPB due to market forces impacting property values, ease of resale and rental income.*
- *As stated in the answer to questions 1, inaccuracies and rounding will create disputes where the % of NBS is near 20%.*
- *Both categories are described as high risk anyway, so additional complication adds little.*
- *It would create a greater workload/complexity for TAs e.g. if further information came to light that changed the rating from below to above 20%, a new notice would be required.*

The BCCG disagrees with the WCC submission that a shorter timeframe be applied to buildings less that 20%NBS. This fails to recognise the fact that many owners simply have no means to raise the significant funds needed to undertake strengthening or require time to assemble the funds. It also ignores that Bodies Corporate face huge challenges progressing strengthening projects in a short time frame. It can take years to get the necessary agreement and small percentage of owners can stall the process. Because of the high costs involved, the only legal recourse under the UTA2010 is often the High Court and so legal action isn't necessarily a quick fix to obstructive owners. If the WCC's suggestion were to be implemented, it would only be workable if financial assistance packages and extensive technical advice/support were made available to owners of buildings below 20%.

11. Do you agree with the proposal to delineate the categories of ratings as 'less than 20%NBS' and '20-33%NBS'? What are the reasons for your views?

No – see answers to question 10.

12. Are there any other risk parameters that could be taken into consideration in establishing the earthquake ratings categories?

13. Do you have any other comments on the proposals about categories of earthquake-ratings?

Notices

Proposal at a glance	What this does	Why
EPB notices (section 5.2)	Establishes the 'look' of notices applied to buildings in each category	Provides information about the risk of specific buildings, creates more incentive for owners to address the highest risk buildings **Note**: the content of these notices is prescribed in the Amendment Act

14. Do you agree that issuing different forms of EPB notices will help to achieve the objectives for all regulations? What are the reasons for your views?

The BCCG's view is that different forms of notices are contrary to the objectives of clarity and efficiency. The notices should be kept as simple as possible to aid both the public and building owners' understanding.

We assume that one of the primary purposes of the notice is to inform the public, enabling them to make a choice as to whether or not to enter the building. Different forms of notice for purely administrative reasons increases the complexity and the chance for confusion.

The BCCG would prefer a single form of notice, with the % of NBS or the words "Not yet rated" prominently displayed and minimal "fine print".

15. Do you agree with the proposal to issue three forms of notice? Do you think this number and type is sufficient? What are the reasons for your views?

The BCCG does not agree with three forms of notice, as outlined in the answer to question 14.

Regarding having a different form of notice for transitioning from the S124 notice: the public have no need to understand the administrative/legal complexities. If the notices have to include "fine print" in order to meet legal requirements, and each notice requires different "fine print", then if TAs feel that a different style of notice will prevent their staff from issuing the wrong notice, the BCCG accepts the necessity.

The proposal suggests using the lowest category style of notice for buildings with no assessment. This is unnecessarily alarmist and unfair. So if three forms of notice are retained, we would argue for using the higher category for unrated buildings.

16. If you did not agree that there should be three forms of notice, how many and what type of forms do you suggest we should use?

The BCCG would prefer a single form of notice, with the % of NBS or the words "Not yet rated" prominently displayed.

17. Is the information layout clear and easy to read? If not, what would you suggest to improve the forms?

The discussion document does not show the proposed wording or final layout, so it is difficult to comment.

Ideally, the wording should be kept to a minimum, with little or no "fine print", however, we recognise the possible need to meet legal requirements. If a large amount of fine print is required for legal reasons (as appears on the current Wellington City Council s124 notices in accordance with advice of their legal team), then the % of NBS and the time frame need to be shown in a prominent position and in large text as both are not evident on current s124 notices (the % of NBS is not currently shown).

If legal requirements require different "fine print" for the 3 different scenarios, provided TAs feel that a different style of notice will prevent their staff from issuing the wrong form of notice, then the BCCG accepts the necessity, however, we believe the disadvantages outweigh the benefits.

18. Should we make the forms more distinctive? If so, what do you think would achieve this?

If there is only a single form of notice, then orange/black striped border seems a good option, provided this does not conflict with any other NZ or international usage.

19. Is there any other comment you would like to make about the forms of notice?

We concur with the WCC view that whatever form of notice is chosen, public education is crucial. The public has demonstrated a significant lack of understanding of the significance of the % of NBS after the recent quake. Social media indicates that many believe that 100% of NBS should mean no damage and no chance of injury, and that EPBs have proven to be superior to new buildings with a higher % of NBS. This suggests an inability/lack of faith to assess the risk of entering a building based on the presence or absence of a notice.

We also concur with WCC that the placement and longevity of notices is an issue. Obviously, the notice should be put as close as possible to the entrance and in a manner where it can be readily seen by anyone entering the building, however, building owners need to be consulted regarding the best place to display the notice. There should also be a requirement for buidling owners to provide access to ensure the notice can be affixed inside the building (unless the means for affixing them on the outside prevents removal by the public – in some cases the WCC has simply used tape to stick a notice to the outside of a window).

Substantial alterations

Proposal at a glance	What this does	Why
Criteria for 'substantial alterations' (section 5.3)	Sets criteria for territorial authorities to identify when alterations to an earthquake-prone building trigger requirements for earlier seismic upgrades	Promotes more progressive and earlier upgrades of earthquake-prone buildings, which helps achieve improved building safety

20. Do you agree that establishing criteria for substantial alterations will help to achieve the objectives for all regulations? What are the reasons for your views?

Because the term is currently used in the Act without definition, further clarity is essential to meet the objectives. A set of criteria appears to be a sensible solution to ensure consistency and avoid personal or localised interpretation, provided the criteria are meaningful and workable in practice.

The BCCG notes the comments in the Wellington City Council submission: it is a concern that a TA has already tried to apply a criterion to force strengthening as part of other substantial alterations and found it to be unworkable.

Although the principle of forcing building owners to strengthen in preference to other capital improvements (such as conversion from commercial to residential use, modernisation of facades and interiors) seems reasonable, in practice it may prevent a progressive programme of strengthening over a number of years, which may be the only way some owners will be able to afford to strengthen. Although it is proposed actual strengthening work is excluded, associated works are not. It is not uncommon for owners to include maintenance and added value work (such as double glazing) while strengthening work is undertaken in the same part of the building. For example, taking advantage of scaffolding being in place. This helps offset the strengthening costs and is recommended by some architects as a means to return to earlier higher asset values.

Unfortunately, s133AT already makes the defnition of criteria a necessity. The challenge therefore is to find a way to define the criteria for 'substantial alteration' in such a way that it stops owners deferring strengthening in favour of other "nice to have" capital improvements, while at the same time allowing owners to develop a programme of works that achieves additional benefits to help offset the strengthening or loss in asset value.

21. Do you agree that the criteria for substantial alterations should be set out in regulations? If not, what other mechanism could be used to define the criteria for substantial alterations and why?

Including the criteria in the Regulations would ensure transparency, but there is still doubt whether workable criteria can be established.

22. Do you agree with the concept that there should be a single measure only, common to all earthquake-prone buildings across the country, for identifying what building work will be deemed to be 'substantial alterations'? Please give reasons for your views.

Although national consistency is desirable it may be difficult. For example, we believe not all TAs use capital value for rateable values.

23. If so, do you agree with the proposal that this be 25% of the rateable value of the building (excluding land)? Please give reasons for your views.

The BCCG does not have adequate data to assess whether 25% is reasonable. Perhaps MBIE could seek input from property developers and the construction industry as to what the typical costs for the sort of major works that owners may seek to do in preference to strengthening.

24. If you agree with using a single measure to identify substantial alterations, but do not support using the building value as a denominator, then please state what you think the measure and the value should be (eg a fixed financial threshold of *(say)* $200,000 for the total value of the building work, or some other measure or value).

A suitable fixed figure for the specified value will be difficult to identify and risks requiring regular changes to the Regulations as building values and construction costs increase. It also opens the possibility of a BC undertking work in stages to keep under the identified limit. (In fact this may also be seen as an advantage given that it would allow time for the BC to raise funds for the next tranche of work.) The BCCG therefore does not support it.

25. If you disagree with the proposal, and think that there should be more than one measure to identify substantial alterations, what should these be and why?

The BCCG is not qualified to discuss this in detail, however, would it be possible to instead provide examples of the types of alteration rather than the value or the value alone? For example, the conversion of an entire office building into residential apartments could be considered substantial.

26. Should we choose a different approach to setting the threshold for substantial alterations between areas with higher value buildings and areas with lower value buildings (as may occur between some urban and rural areas). If so, what should the approach be?

27. What are the implications of defining 'substantial alterations' (eg through a percentage of rateable value, and/or a fixed financial value for proposed building work) for mixed use buildings and buildings with multiple titles (eg multi-storey unit title apartments, shopping malls)?

None beyond those already discussed. It should be noted that it is usual for the rateable value to be allocated at the unit level rather than the entire building for multi-title buildings.

28. What are the implications of defining 'substantial alterations' (eg through either a percentage of rateable value, and/or a fixed financial value for proposed building work) for owners of heritage buildings?

It would restict owners of such buildings from establishing a programme of works over time to address the many challenges and costs of maintaining a heritage building.

29. Are there any situations where it would not be appropriate to impose the 'substantial alterations' criteria on proposed building work? Please explain what situation/s and give reasons for your views.

Work on fire protection systems and to provide disabled access needs to be excluded. S133AT(2) requires compliance to the buidling code "as nearly as is reasonably practicable", and some owners may choose to do this prior to the strengthening work.

30. Do you have any other comments on the proposals about the criteria for substantial alterations?

The Regulations must support a phased approached to strengthening, including associated other mandatory work and added value work included to faclitate the strengthening.

Information and advice must be readily available to Bodies Corporate as to how they could acceptably phase such work, as this may well resolve the obstacles that some BCs are facing – the seemingly impossible task of strengthening (and its funding) may be easier if staged over time. TAs and MBIE must proactively supply this type of support.

Exemptions

Proposal at a glance	What this does	Why
Exemptions (section 5.4)	Prescribes characteristics an earthquake-prone building must have for territorial authorities to consider exempting owners from carrying out seismic work	Allows owners of earthquake-prone buildings to be exempted from upgrading their buildings if the consequence of failure is low

31. Do you agree that establishing prescribed characteristics for exemptions will help to achieve the objectives for all regulations? What are the reasons for your views?

The BCCG believes that ideally cost vs benefits and risk need to be considered when determining whether or not a building should be strengthened, and from this perspective, exemptions seem to meet the fairness objective. There is a fundamental flaw with the "one size fits all" approach of both the Act and the proposed regulations. Some commercial and multi-residence buildings are very small, respresent a low risk to public safety and the occupants are prepared to accept the risk for themselves. They are not, however, given the option to do so, and won't under the proposed characteristics.

We are therefore concerned that application of these prescribed characteritsics could create situations where the equity objective is not met.

While noting that it is unlikley, by their very nature, that most Bodies Corporate will be eligible for exemptions, it is the BCCG's view that exemptions could create discrepancies and inequalities within some communities. Some owners will not be eligible for an exemption where there is seemingly relatively low risk (e.g. a URM single storey commerical building with only 2 employees) while others could be eligible where the public may consider the risk, or at least the consequence, is greater (e.g. a community hall where 30 people may gather twice a year for an all day event).

If the intent of exemptions is to address cost concerns, then financial assistance would be preferable to inequitable exemptions. A wider application of exemptions should also be considered, to allow owners and occupants to accept their own personal risk where no wider public safety issues apply.

Note that it is a BCCG position that if the argument for strengthening a building relates to public safety then there should be an element of public funding that goes into the work being required. This doesn't necessarily have to be cash. It may be TA advice on strengthening options, mediation support to assist in achieving BC owner agreement, a zero/low cost loan for those who can't meet the criteria to raise funds through commercial channels etc.

32. Do you agree that the prescribed characteristics for exemptions should be set out in regulations? If not, what other options could be considered and why?

The regulations is the most appropriate place to define these characterics, for reasons of transparency.

33. Do you agree that territorial authorities should have some discretion to make decisions about exemptions using parameters for building occupancy and use as a guide?

Notwithstanding our view that exemptions may affect the Regulation's objective of equity, TAs would need some discretion, but care must betaken to avoid greater inequities nationwide.

34. Do you think the proposed occupancy thresholds are appropriate to represent life safety risk? (These are: low - 0-50 people, medium - 51-300, high - more than 300.) What are the reasons for your views? If you disagree, what do you think the thresholds should be?

The low threshold seems high, especially given the comment regarding people's perception of "scale aversion" and multi-fatalilty events.

35. Do you think the proposed 'frequency of occupancy' thresholds are appropriate to represent life safety risk? (These are: low - <25 times per year, occasional -25-100 times per year, frequent - more than 100 times per year.) What are the reasons for your views? If you disagree, what do you think the thresholds should be?

These frequencies are very high and contradict the frequencies specified on p43 of the proposal document, which seem more appropriate. Duration is also mentioned on p43, and certainly should be part of the defined thresholds (as per occupancy and frequency).

36. Do you think that the exemptions provisions should apply to priority buildings? What are the reasons for your views?

Priority buildings by their very definition should not be exempt in areas of high seismic risk. However, it remains to be seen how owners of some priority buildings, eg a heritage church that just happens to be on a "strategic route", will be able to afford to strengthen without financial assistance from central/local government. In areas of low/medium risk, even priority buildings should be considered on a case by case basis.

Again, BCCG support the view that addressing the need to strengthen priority buildings recognises the public good element of the work and so should be eligible for assistance from local and/or central government.

37. Do you think that the seismic hazard area of the building should be a consideration for exemptions?

Yes it should be a factor. Differing thresholds could be applied to different seismic hazard areas.

38. Should the occupancy thresholds be lower if the main occupants of a building are young children or people who would require mobility assistance to leave?

The thresholds should either be much lower, or exemptions not allowed for buildings with uses related to young children or people requiring mobility assistance.

Note however that the consequence of this may be that childcare centres find it harder to find affordable rental premises.

39. What other factors should a territorial authority consider when considering an application for an exemption under section 133AN?

No other factors identified (other than duration of occupancy)

40. Do you have any other comments on the proposals about exemptions?

The proposal emphasises "life safety hazard". This emphasis appears to contradict the term "injury" use in the definition of an EPB in the Act. The term injury is unfortunately vague, but most people would not consider it to only refer to life-threatening injuries. Should TAs consider the likelihood of less serious injuries when issuing exemptions?

The BCCG has concerns that a TA is unlikely to be able to monitor changes in use (occupancy, frequency, duration etc) after an exemption has been granted. Although an exemption notice must be displayed, it is probable that many will not read its terms and conditions, and unwittingly or deliberately contravene those terms.

General

41. Do you have any other comment to make on the proposals (for example, matters related to implementation and monitoring)?

The BCCG strongly believes that the largest obstacles to Bodies Corporate strengthening are lack of ability to raise funds (coupled with the difficulty in getting agreement to undertake the work in the first place), and the lack of skills/knowledge to deal with managing the complexities of the strengthening process.

We believe that as the benefits of strengthening are a matter of public good, central and local government have a responsbility to provide advice and support, both financial and otherwise. This would include low or no interest loans and a funded advisory service. Building owners should also be provided with a complete information package, including guidance and toolkits, at the time they are informed that their building is potentially earthquake-prone. The BCCG has a number of other suggestions of this nature and would be happy to work further with MBIE.

The BCCG is particularly concerned at the impact of the introduction of priority buildings on BCs that are already failing in their attempts to raise the funds required. Shortened time frames for priority buildings, which in Wellington may have already been issued with s124 notices a few years ago, will make it extremely difficult for those BCs who were reliant on a longer term for accumulating the necessary funds.

The BCCG concurs with the Wellington City Council submission's comment that the effectiveness of the Regulations should be reviewed after their introduction, but questions whether 12-18 months is adequate.